

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of :)
)
Review of the Pioneer's)
Preference Rules)

ET Docket No. 93-266

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

PETITION FOR RECONSIDERATION

To: The Commission

QUALCOMM Incorporated ("QUALCOMM"), by its attorneys, and pursuant to Section 1.106 of the Commission's Rules, hereby files this Petition for Reconsideration in response to the Federal Communication Commission's Second Report and Order and Further Notice of Proposed Rule Making ("Second Report and Order") in the above-captioned proceeding. The Second Report & Order proposes rules concerning procedures and criteria to be followed in evaluating pioneer's preference requests. QUALCOMM filed Comments in response to the Commission's Notice of Proposed Rulemaking¹ in this proceeding in which it expressed its belief that, "the fundamental policies underlying the Commission's pioneer's preference rules continue to be beneficial and in the public interest"² QUALCOMM maintains that belief. However, in this Petition, QUALCOMM requests reconsideration of certain aspects of the Second Report & Order so as to improve those pioneer preference rules.

A. The Commission should reconsider its determination of what constitutes "innovative technology".

The principle flaw in the Second Report & Order is its failure to provide a clear understanding of what is "innovative technology". QUALCOMM notes four aspects of the Second Report & Order discussion of innovative technology that are

¹ Review of the Pioneer's Preference Rules, Notice of Proposed Rule Making, Docket No. 93-266, 8 FCC Rcd 7692 (1993) ("Notice").

² Comments of QUALCOMM Incorporated, ET Docket No. 93-266, November 15, 1993 at 3 ("Comments").

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not clearly defined or that are contrary to the intention of the pioneer's preference rules.

1. **Existing Service**

In the Notice, the Commission made the following statement:

Transferring a technology from an existing service in a lower band to a "new" service in a higher band should not be recognized by award of a pioneer's preference.³

In its Comments, QUALCOMM asked the Commission to, "make it clear that the language 'a technology from an existing service' refers to a technology which is actually being used to provide a service which exists at the time the preference request is filed, not a service which is implemented after the filing date".⁴ The Commission did not respond to QUALCOMM's request. QUALCOMM believes that merely proposing that a new technology could be used in an existing service should not preclude that technology from being considered for a pioneer's preference in a new service. QUALCOMM again asks the Commission, upon reconsideration, to make it clear that when it used the phrase "a technology from an existing service", it was referring to technologies that were being used to provide the existing service at the time of the filing of the preference request.

2. **Eligibility**

In its Comments, QUALCOMM also suggested that, "an innovative technology which can be applied to more than one new service should be eligible for a preference in all services that are not existing services."⁵ In the Second Report & Order, the Commission said it disagreed with QUALCOMM's suggestion, reasoning that, "(o)nce a pioneer's preference has been granted for a service that uses a new technology, that technology is no longer new".⁶ QUALCOMM was not suggesting that a new technology should receive multiple preference awards. It was

³ Notice at 7694.

⁴ Id. 7.

⁵ Id. (emphasis added).

⁶ Review of the Pioneer's Preference Rules, Second Report and Order and Further Notice of Proposed Rule Making, ¶ 30, FCC 95-80, released March 1, 1995.

suggesting that such a technology should be eligible for a preference in any service to which it was applicable. That is, the Commission should not use the fact that a technology is applicable to multiple service to deny it a preference in any service. QUALCOMM believes this amounts to penalizing a technology for being too good.⁷ This is clearly contrary to the intention of the pioneer's preference rules and should be reconsidered.

3. Incentives

QUALCOMM also asked the Commission to, "make it clear that an innovator that develops a new technology that both significantly improves an existing service and, additionally, may be used to provide a new service in a different band is eligible for a preference in the new service".⁸ The Commission did not respond directly to QUALCOMM's request. However, it did "find that granting a pioneer's preference in the first service that was developed or enhanced by the innovative technology is sufficient incentive to encourage proposals to be submitted".⁹ QUALCOMM agrees. But in cases where the Commission is unable or unwilling to grant a preference in the first service, no incentive can exist unless preferences are available in the new service.

4. New Service

Finally, QUALCOMM asked the Commission to, "clarify what it means by, 'a 'new' service operating in a higher band".¹⁰ Once again the Commission did not respond. It is important for administration of the pioneer's preference rules that the notion of a "new service" be clearly understood. In the case, for example, of Personal Communications Services ("PCS") there may be some confusion. Section 24.5 of the Commission's Rules, 47 C.F.R. § 24.5, defines Personal Communications Services as, "Radio communications that encompass

⁷ In the Second Report and Order, the Commission itself recognizes that "it is obviously beneficial to the public if a technology can be used in more than one service". Id.

⁸ Comments of QUALCOMM, 7.

⁹ Second Report and Order, ¶ 30.

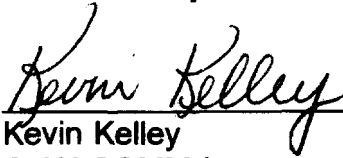
¹⁰ Comments of QUALCOMM, 7.


mobile and ancillary fixed communication that provide services to individuals and businesses and can be integrated with a variety of competing networks." Section 22.901 (d) provides, in pertinent part, that, "licensees of cellular systems may . . . provide personal communications services . . . on the spectrum within their assigned channel block" Thus the Commission rules imply that broadband PCS is not a new service; rather as cellular pioneer Craig McCaw recently observed "Basically, PCS is cellular at a different frequency."¹¹

In this Petition, QUALCOMM has suggested certain areas where the Commission's pioneer preference rules should be reconsidered. Doing so at this juncture will substantially improve the future administration of those rules.

Respectfully submitted,

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¹¹ Wall Street Journal, "Craig O. McCaw Confounds The Giants with His Wild And Wooly PCS Bidding" February 23, 1995 at B1.

CERTIFICATE OF SERVICE

I, Diane Drago, hereby certify that copies of the foregoing Petition for Reconsideration was served via first-class, postage-prepaid mail, or by hand delivery where indicated by an asterisk (*), on this 12th day of April, 1995, to the parties listed below.

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